Remarks

By the foregoing Amendment, claims 1, 7 and 11 are amended, and claim 10 is cancelled. Entry of the Amendment, and favorable consideration thereof is earnestly requested.

The Examiner has rejected claims 1-5 and 7 under 35 U.S.C. §102(b) as anticipated by Japanese Patent Document No. JP 55-81317 to Shimonaka ("the '81317 reference"). The Examiner has also rejected claims 1-4, 6 and 7 under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,329,940 to Adair ("the '940 patent"). The Examiner has further rejected claims 8 and 9 under 35 U.S.C. §103 as unpatentable over the '940 patent in view of WO 98/46117 to Chatenever et al. ("the '46117 reference"). The Examiner has also rejected claims 10 and 11 under 35 U.S.C. §103 as unpatentable over either the '81317 reference or the '940 patent in view of U.S. Patent No. 5,921,917 to Barthel et al. ("the '917 patent"). These rejections are respectfully traversed.

Applicant has amended claim 1 to further include, among other elements, the requirement that said outer diameter of said shaft lies in a range of about 1.5 mm to about 2.5 mm. The Examiner has submitted that the '917 patent shows an analogous intubation system having a shaft with a diameter of 2.5 mm and references the '917 patent at col. 8, lines 30-35. Applicant respectfully submits that col. 8, lines 30-35 of the '917 patent appears to be directed toward the maneuvering the endotracheal tube into the patient to a proper position about 2 to 4 cm in front of the bifurcation of the trachea rather than referring the diameter of the shaft. Instead, the '917 patent discloses at col. 7, lines 48-49 that preferably the "shaft 28 is approximately 38 cm in length, about 3.5 mm in diameter."

Applicant respectfully submits that neither the '81317 reference, the '940 patent nor the '917 patent disclose that the outer diameter of the shaft lies in a range of about 1.5 mm to about 2.5 mm as required by amended claim 1 and therefore none of the

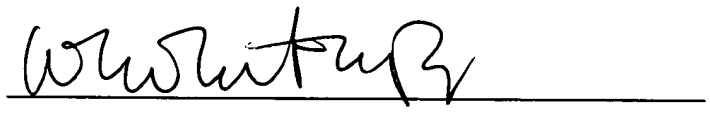
references can anticipate claim 1. In addition, because none of the cited references disclose that the outer diameter of the shaft lies in a range of about 1.5 mm to about 2.5 mm as required by amended claim 1, no combination of the cited references can render claim 1 obvious.

It would not have been obvious to modify the '917 patent to have a shaft that lies in a range of about 1.5 mm to about 2.5 mm as required by amended claim 1. The '917 patent discloses at col. 7, lines 48-49 that preferably the "shaft 28 is approximately 38 cm in length, about 3.5 mm in diameter." This diameter shaft is too large and is unsuitable for the intubation of neonatal or premature infants. The very small diameter of the shaft, as disclosed in the present invention, is specially designed for use with babies stating that there are "very small anatomical structures of newborn babies in the region of the throat and trachea" that the configuration of the shaft "allows easy and rapid introduction of the endoscope with the tube in newborn babies" and that in a "preferred embodiment, the outer diameter of the shaft is in the range of about 1.5 mm to 2.5 mm." (Page 8, lines 6-8; page 5, lines 20-21; page 8, lines 17-18.) In addition to the very small diameter, the shaft member of the present invention is rigid and "is optimally adapted to the employed tube and gives the tube its form stability in the optimal curved shape." (Page 5, lines 3-4; page 7, lines 24-26.) The '917 patent on the other hand, teaches the use of a larger diameter shaft and that "the practitioner can bend the shaft 28 into the desired shape for a particular patient" such that it can "be used with endotraceal tubes 26 of any length for different size patients." (Col. 7, lines 8-9, 13-14 and 48-49.) It is highly undesirable to have a bendable shaft member for use with a shaft member in the range of about 1.5 mm to about 2.5 mm because a large radius of curvature is critical with such a small diameter shaft member, which provides better optical properties, protects the optical fibers in the very thin shaft from damage due to bending and kinking, and provides for optimal intubation of the baby. (Page 5, lines 3-7, 12-14 and 22-28.)

It would not have been obvious to modify the '917 patent shaft from 3.5 mm down to a range of about 1.5 mm to about 2.5 mm, which would also require that the shaft be substantially rigid in order to protect the optical fibers from damage due to bending and kinking, because this would have effectively rendered a principle object or feature of the '917 patent unusable, namely to provide a adjustable shaft that may be utilized with many differing sized individuals. Therefore, because none of the cited references teach or suggest a shaft having a diameter in a range of about 1.5 mm to about 2.5 mm, which would require the shaft to be substantially rigid, it would not be obvious to modify the diameter of the shaft in the '917 patent to the claimed range because the preferred embodiment of the '917 patent teaches a bendable shaft for use with many different sized individuals.

It is respectfully submitted that claims 1-9 and 11, all of the claims remaining in the application, are in order for allowance, and early notice to that effect is respectfully requested.

Respectfully submitted,



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